

Bombay High Court

Bombay High Court

Letters Patent Appeal ... vs Vidarbha Region, Nagpur Bench, ... on 30 July, 2012

Bench: V. A. Naik, A. B. Chaudhari

lpa276.12.odt

1

IN THE HIGH COURT OF JUDICATURE AT BOMBAY NAGPUR BENCH AT NAGPUR

LETTERS PATENT APPEAL NO.276/2012

IN

WRIT PETITION NO.3818/2010 (D)

APPELLANTS : 1. The State Information Commissioner Vidarbha Region, Nagpur Bench, New

Administrative Building, Civil

Lines, Nagpur (Deleted).

2. Mr. Satish Sahasrabuddhe,

Joint Commissioner of Transport

and First Appellate Authority,

New Administrative Building,

Near Ambedkar Garden,

Bandra East Mumbai.

3. Mr. A.N. Bhalchandra, the then

Public Information Officer and

Deputy Commissioner of Transport,

New Administrative Building, Near

Ambedkar Garden, Bandra East,

Mumbai.

...Versus...

RESPONDENT : Mr. Tushar Dhananjay Mandlekar, Aged about 38 years, Occ Advocate

and Secretary of I.S.R.T. S.N.G.O.

Address International Society for
Road Transport and Safety 20 NIT
Complex Hill Road, Gandhinagar,
Nagpur.

----- Shri D.M. Kale, AGP for appellants

Respondent in person

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2

CORAM : SMT. VASANTI A. NAIK AND A.B. CHAUDHARI, JJ.

DATE : 30.07.2012

ORAL JUDGMENT (PER : SMT. VASANTI A. NAIK, J.) The letters patent appeal is admitted and heard finally at the stage of admission with consent of the parties.

The respondent had filed an application under Section 6 of the Right to Information Act, 2005 (hereinafter referred to as "the Act" for the sake of brevity), seeking certain information from the Public Information Officer and the Deputy Commissioner of Transport, Mumbai. Since the application was filed on 24.7.2009, normally the information ought to have been supplied to the respondent within a period of 30 days, as prescribed by the provisions of the Act. The last date for supplying the information free of costs was 23.8.2009. It appears that the appellant had issued a communication to the respondent, dated 20.8.2009 and posted on 24.8.2009, asking the respondent to pay an amount of Rs.3,310/- for the information sought by the respondent, the documents of which ran into nearly lpa276.12.odt

3

3419 pages. The appellants did not furnish the information within a period of 30 days. The respondent filed an appeal under Section 19 (1) of the Act as the desired information was not supplied. The appeal was allowed and the first appellate authority directed the appellants to furnish the information free of costs to the respondent. The respondent filed a second appeal, but the same was dismissed. The respondent filed Writ Petition No.3818/2010, challenging the order of the State Information Commissioner and seeking a direction to the appellants to furnish the desired information free of costs as per the original application. A further direction to pay a penalty of Rs.25,000/- under the provisions of Section 20 of the Act was also sought. The learned Single Judge partly allowed the writ petition by the judgment, dated 26.11.2010 in appeal and directed the appellants to supply the information to the respondent free of costs within a period of ten days. The learned Single Judge also imposed costs of Rs.2,000/- on the appellants. Being aggrieved by the order, the appellants have preferred the present letters patent appeal.

lpa276.12.odt

4

Shri Kale, the learned Assistant Government Pleader appearing on behalf of the appellants submitted that the information sought by the respondent ran into almost 3419 pages and it was humanly impossible for the

appellants to provide the information to the respondent within a period of 30 days. According to the learned Assistant Government Pleader, it is not a case where the appellants had mala fide delayed the supply of the information to the respondent within a period of 30 days. The learned Assistant Government Pleader submitted that though it is necessary for the Public Information Officer to supply the information within a period of 30 days, the law would not compel a party to do that what is impossible. It is submitted that it was impossible for the appellants to furnish the information running into 3419 pages within a period of 30 days. In any case, according to the learned Assistant Government Pleader, the period of 30 days expired on 23.8.2009 and the letter asking the respondent to pay the necessary charges for supplying the information was issued on the very next day on 24.8.2009. The learned Assistant lpa276.12.odt

5

Government Pleader took this Court through the application filed by the respondent under Section 6 of the Act to point out that it was highly impossible for the appellants to collect the entire information and provide the same to the respondent within 30 days. In the facts and circumstances of the case, according to the learned Assistant Government Pleader, the learned Single judge ought not have imposed costs of Rs.2,000/- on the Public Information Officer. Shri Mandlekar appeared in person and supported the order passed by the learned Single Judge on 26.11.2010. The respondent took this Court through the provisions of Sections 7 and 20 of the Act to point out that it was necessary for the Public Information Officer to supply the information within a period of 30 days, failing which the Public Information Officer was liable to supply the same to the respondent free of costs and was also liable to pay penalty for each day till the date of supply of the information. The respondent submitted that in fact the learned Single Judge ought to have imposed penalty of Rs.25,000/- on the appellants and since the same lpa276.12.odt

6

was not imposed, the respondent had filed a letters patent appeal. Unfortunately, according to the respondent, the letters patent appeal was dismissed by this Court. The respondent submitted that the learned Single Judge had rightly directed the appellants to pay costs of Rs.2,000/- to the respondent. On hearing the learned Counsel for the parties and on perusal of the application under Section 6 of the Act, it appears that the application was not made with a bona fide intention and the respondent had misused the provisions of the Act by seeking the information. It appears on a reading of the application that the time period relating to the information extended from 01.01.2001 to 24.07.2009. It would be necessary to reproduce the information sought by the respondent by the said application from the Officer.

(1) It is reported in the Newspaper

Lokmat that large number of imported vehicles were registered illegally and the taxes were evaded. Kindly give the copy of the letters written by the lpa276.12.odt

7

Transport Secretary to the Transport Commissioner and vice versa. (Kindly give the copies of the entire communication between the office of transport secretary and the office of transport commissioner).

(2) Kindly give the copies of all

the complaints/directions received by your office from Ministers, NGO's, MLA, MLC, Individuals or any other person in this regard.

(3) Kindly also give the preliminary report sent by the transport commissioner in this regard to the govt. (4) Kindly give the copies of all

the letters/communication made by the DRI officials with your office.

(5) Kindly give the copies of the

show cause notices sent if any to the Motor Vehicle Inspectors/officers.

(6) Kindly give the copies of the

reply of motor vehicle officers received if any by your department in this regard. (7) Is it true that your office has

initiated the steps to give the enquiry to the CBI? If yes then kindly give the copies of all such letters, files, records of decisions made by the Transport Department.

lpa276.12.odt

8

(8) Kindly also give the amount of

estimated loss of customs, octroi, excise duty, road tax caused to the state exchequer because of the illegal registration of the imported vehicles. (9) Kindly give the procedure and rules in registration of imported vehicles along with the list if requisite documents.

(10) Kindly give the copies of the complaints made by your department to the police in this regard.

(11) Kindly give the list of the

vehicles along with the vehicle numbers which were found to have evaded the necessary taxes.

It is apparent from a reading of what is stated above that instead of seeking information on some specific issues, the respondent sought general information on scores of matters. The application is vague and the application does not make it clear to the Information Officer as to what information is actually sought by the respondent from the Officer. It was literally impossible for the appellants, as pointed by the learned Assistant Government Pleader, lpa276.12.odt

9

to supply the entire information sought by the respondent to the respondent within a period of 30 days. The documents ran into 3419 pages. We had asked the respondent while hearing of this letters patent appeal as to what action did the respondent take in pursuance of the information sought by the respondent after the information was supplied and it was replied by the respondent appearing in person that nothing was done on the basis of the information supplied by the appellants as there was some delay in supplying the information. It is really surprising that thousands of documents are being sought by the respondent from the authorities and none of the documents is admittedly brought into use. We are clearly of the view in the aforesaid backdrop that the application was filed with a mala fide intention and with a view to abuse the process of law.

In the aforesaid set of facts, we feel that there is no justification for imposing the costs of Rs.2,000/- on the appellant no.2. The principle of *lex non cogit ad impossibilia* is clearly applicable to the facts of the case. Law does not compel a person to lpa276.12.odt

10

do that what is impossible. In the facts of the present case, we feel that it was impossible for the appellant no.2 to supply the information which ran into thousands of pages to the respondent within a period of 30 days, as those pages were not readily available with the respondent on the day the application was filed and the Officers were required to search and collect the information, which was required to be supplied to the applicant. We find that the information sought by the respondent and reproduced in this judgment was so general and extensive that it could not have been found out within a couple of days or even within a fortnight in spite of the best efforts of half a dozen persons working in that direction. Hence, we feel that the imposition of costs of Rs.2,000/- on the appellant no.2 was not proper. Since a part of the order in appeal has already been complied with and the appellant no.2 has supplied the necessary information to the respondent free of costs, there is no reason to interfere with the same. We, however, set aside the order imposing the costs of Rs.2,000/- on the appellant no.2. lpa276.12.odt

11

In the facts of the case, the letters patent appeal is allowed in the aforesaid terms with costs. JUDGE JUDGE

SSW